IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO.358/2004
(Shiv Shanker Soni & An. Vs. State & Ors.)

Date of order : May 21st, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. R.L. Jangid, for the petitioners.
Mr. S.N. Tiwari, Public Prosecutor.
Mr. Sanjeev Johari, for the non-petitioner No.2.

By way of filing the present revision petition, the petitioners have prayed for quashing of impugned order dated 12.4.2004 passed by learned Addl. Civil Judge (Junior Division) & Judicial Magistrate, Fist Class, No.3 in FIR No.14/2003, Police Station, Udaimandir whereby the protest petition filed by the petitioners was dismissed.

Brief facts inter alia narrated in the revision petition are that the petitioner No.1 filed a written FIR before Police Station Udai Mandiar, Jodhpur on 9.1.2003 wherein it was alleged that an ambassador car No. RJ-19-T-1626 was purchased by the petitioner No.2 - wife of petitioner No.1. On

8.1.2003 at about 8 a.m., when his Driver Moolshanker, who was driving the car along with his two children, who were sitting in the car, were passing through Darpan Cinema, one Altaf with two-three other persons, residents of Jodhpur, asked the driver to stop the car and when he stopped the car, they forcibly pulled out the driver and his two children from the car and took away the car without giving any information with regard to reasons for taking away the car in their possession.

The Driver of the Car – Moolshanker informed this incident to the petitioner No.1 on telephone. Upon this information, the petitioner No.1 along with his driver went to the Police Station Udai Mandir and registered the said FIR against the non-petitioners Nos. 2 and 3 and three other persons. Thereafter regular investigation was conducted. It was also alleged in the FIR that when they reached the Police Station, the Incharge of the Police Station gave a telephonic message to Altaf because Altaf gave his telephone number to the driver when vehicle was taken over in possession by him. After receiving telephonic message from Police Station, said Altaf reached Police Station Udai Mandir, Jodhpur and assured the petitioner No.1 that he will return the vehicle on 9.1.2003 but the said vehicle was not returned and he refused to return the vehicle. Thereafter, the Police registered the case under Section 379 I.P.C.

After usual investigation, the Police filed final report before the learned Magistrate and after receiving notice with regard to filing final report by the Police, the petitioners filed protest petition for taking cognizance against the non-petitioners because they forcibly and illegally took the possession of the vehicle from the driver of the petitioners. Upon the protest petition, the statements were recorded but at last, learned Magistrate rejected the protest petition while observing that the petitioner No.1 – Shiv Shanker Soni took a loan of Rs.1,00,000/- from Birla Global Asset Finance Com. Ltd., Jodhpur and he has executed agreement to repay the loan amount with interest but he failed to deposit the installments as per the terms and conditions of the agreement. Thereafter, the possession of the vehicle was taken by the Finance Company through Altaf and other persons. It is also observed in the impugned order that before taking into possession of the vehicle, said Altaf has informed the Police also that in pursuance of non-payment of installments of loan, the possession of the vehicle was taken as per the terms and conditions of the agreements executed by the petitioner. It is also observed in the order that complainant only wants to make out his case for taking the said vehicle in his possession by the Police ultimately being the registered owner of the vehicle, he will get the possession of the vehicle while filing an application

under Section 451 Cr.P.C. and his intention is only to get the possession of the vehicle without making any payment of loan. Therefore, the reasons for filing FIR is totally based on malice intention. It is also observed that as per the terms and conditions of the agreement, there is right left with the non-petitioners to take possession of the vehicle as per the terms and conditions. Hence there is no question of taking any cognizance for the alleged offence. It is observed in the impugned order by the Magistrate that the learned counsel for the petitioners has placed reliance on the judgment of this Court (Jaipur Bench) passed in SB Civil Writ Petition No.1205/1997 decided on 8.7.1997 as well the judgment rendered by Hon'ble Supreme Court in case of Manipal Finance Corpn. Ltd. Vs. T. Bangarappa & Anr., reported in 1994 Supp (1) SCC 507 wherein the Hon'ble Supreme Court has directed that those vehicles upon which the hire purchase agreement is executed in favour of the Finance Company, they are liable to be returned back to the Finance Company and no action can be taken against the Finance Company. It is further observed in the order that the vehicle was seized by the representatives of the Finance Company due to non-payment of installments of loan. It is also observed that the cheques which were given in lieu of installments by the complainant were also dishonoured and Altaf was authorized by the Finance Company for taking possession of the vehicle. Therefore, there is

no ground for taking cognizance and the final report filed by the Police after investigation is required to be accepted because it is a question of transaction under a contract. Therefore, while observing above reasons, the learned Magistrate rejected the protest petition filed by the petitioners and refused to take cognizance against the non-petitioners.

Learned counsel for the petitioners first of all vehemently contended that the action of the non-petitioners is totally illegal and contrary to the law. Learned counsel for the petitioner has invited the attention of this Court towards the fact that though the agreement was arrived at in between the parties and complainant petitioners also agreed vide said agreement that in the event of non-payment of installment, the possession of the vehicle can be taken by the Finance Company but there is no right left with the non-petitioners to take possession of the vehicle forcibly, assaulting the driver and throwing children out of the vehicle. It is also submitted that Altaf and other two persons are not the employee of the Finance Company nor any authorization is placed on record, which authorizes them to take possession, therefore, in the event of non-payment of installments, the Financier though has right to re-possess the vehicle but what will be the method whether it is open to the Finance Company to use force and whether the company can engage vagabonds and hood

lams for effecting re-possession of the financed vehicle. Certainly, the Company cannot be granted any such legal sanction to act contrary to law. The Financiers cannot be allowed to take law in their hands. What the agreement provides must be effected within the sanction of the law of land. Engaging hood lams, practicing intimidation and assaults for recoveries and possession using force can neither be permitted nor can the same be explained away by any ruse and excuse. The judgments cited by learned counsel for the non-petitioners are with regard to taking re-possession but the same do not grant sanction for an illegal method nor it is discussed that what will be the process for taking repossession.

Learned counsel for the petitioners has invited the attention of this Court towards the recent judgment of Hon'ble Supreme Court rendered in case of ICICI Bank Ltd. Vs. Prakash Kaur & Ors., reported in (207) 2 SCC 711, wherein the Hon'ble Supreme Court deprecated such type of practices and held that Banks should resort to procedure recognised by law to take possession of vehicles in cases where borrower has committed default instead of resorting to strong arm tactics. The Hon'ble Supreme Court has deprecated the existing system of engaging youngsters hood lams, hooligans on contract for such recoveries of Banks. The relevant para No.16 of the aforesaid judgment reads as follows :-

> "Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. The practice of iring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognised by law to take possession of vehicles in cases where the borrower may have committed default in payment of the installments instead of taking resort to strong-arm tactics."

While citing the aforesaid judgment in case of ICICI Bank Ltd. (supra), learned counsel for the petitioners contended that as per the conclusion of this judgment, it is very much clear that every action of the respondents is governed by the rule of law. Therefore, the recovery of loans or seizure of vehicles could be done only through legal measures. The Bank cannot employ goondas to take possession by force. Conclusive para No.28 of the aforesaid judgment reads as follows :

> "28. In conclusion, we say that we are governed by the rule of law in the country. The recovery of loans or seizure of vehicles could be done only through legal means. The banks cannot employ goondas to take possession by force."

While citing the aforesaid judgment, it is contended by the learned counsel for the petitioners that cognizance was required to be taken against the respondents for committing offence under Section 379

I.P.C. and therefore, he prays that the order impugned may kindly be quashed and set aside.

Par contra, learned counsel for the non-petitioners vehemently opposed the prayer made by the learned counsel for the petitioners and submitted that due to non-payment of the installment, as per the terms and conditions of the agreement, there is right left with the Finance Company to re-possess the delivery of vehicle and in this case according to the terms and conditions, the non-petitioner No.3 Altaf along with 3 – 4 other persons were authorized to take possession of the vehicle upon which the loan of rupees one lac was taken by the petitioners. There is no illegality in the impugned order. The learned Magistrate has rightly rejected the protest petition and accepted the final report submitted by the police.

I have considered the rival submissions and carefully gone through the record of the case as well as the judgments cited by the learned counsel for the petitioners.

In this case, loan of rupees one lac was taken by the petitioners and though there was outstanding of installments but what the method is required to be taken into account for the purpose of taking possession of financed vehicle must be in accordance with the law. No citizen can be given a

license to act contrary to law. It is also expected from the Finance Company that in the event of non-payment of installments, they can take recourse of law but it is not permissible under the law to use force and engage hood lams, goondas etc. for taking possession of the vehicle and or to seize the vehicle. The legal method is required to be taken into account. However, in the present case, there is no material on record to prove that even non-petitioner No.3 Altaf or other persons were authorized by the Finance Company to take possession of the vehicle forcibly nor it is permissible under the law to engage persons to seize the financed vehicle if there is default of repayment.

According to the judgment of Hon'ble Supreme Court in case of ICICI Bank Ltd. (supra), it has been specifically held by Hon'ble Supreme Court that for the recovery of loan amount or seizure of vehicles, the only legal means can be adopted and the Bank cannot employ recovery agents, who are musclemen to take possession of the financed vehicle.

In these circumstances, in the present case, the Finance Company re-possessed the vehicle without following the due process of law so also the vehicle was taken into possession forcibly while throwing the children and driver out of the vehicle by the unknown persons, therefore, the action is required to be taken against them.

Hence, the order impugned dated 12.4.2004 is set aside and the case is remitted to the trial court with direction that after considering all the facts and circumstances of the case as also the judgment rendered by Hon'ble Supreme Court in case of ICICI Bank Ltd. Vs. Prakash Kaur & Ors., reported in (2007) 2 SCC 711, a fresh order may be passed within a period of 15 days from the date of receipt of certified copy of this order.

Accordingly, the revision petition is allowed.

(GOPAL KRISHAN VYAS), J.

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